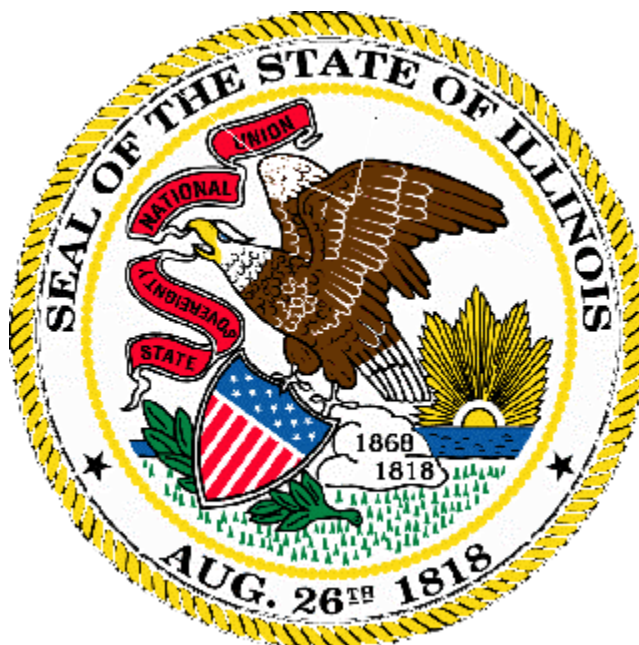


RULES OF THE ILLINOIS HUMAN RIGHTS COMMISSION



56 ILL. ADMIN. CODE PART 5300

TITLE 56: LABOR AND EMPLOYMENT

CHAPTER XI: HUMAN RIGHTS COMMISSION

PART 5300 PROCEDURAL RULES

SUBPART A: INTERPRETATIONS

Section

- 5300.10 [Definition of Terms](#)
- 5300.20 [Computation of Time](#)
- 5300.30 [Service of Pleadings](#)
- 5300.40 [Filing](#)
- 5300.50 [Separability](#)

SUBPART B: RECORDS AND WITNESSES

Section

- 5300.210 [Subpoenas](#)
- 5300.220 [Access to Commission Records](#)

SUBPART C: SETTLEMENTS

Section

- 5300.310 [Settlement Agreements](#)
- 5300.320 [Consideration by Commission](#)
- 5300.330 [Non-Compliance](#)

SUBPART D: REQUEST FOR REVIEW

Section

- 5300.400 [Applicability of the Subpart](#)
- 5300.410 [Filing with Commission](#)
- 5300.420 [Notice by Commission](#)
- 5300.430 [Response by Department](#)
- 5300.440 [Reply to Response](#)
- 5300.450 [Extensions of Time](#)
- 5300.460 [Consideration of Request for Review](#)
- 5300.470 [Additional Information or Referral for Hearing](#)
- 5300.480 [Decision](#)
- 5300.490 [Tolling of Time Period](#)
- 5300.495 [Pending Requests](#)

SUBPART E: HEARINGS

Section

- 5300.510 [General](#)
- 5300.515 [Election to Proceed Under the Alternative Hearing Procedure](#)
- 5300.520 [Conduct of Hearing](#)
- 5300.530 [Powers and Duties of Administrative Law Judge](#)
- 5300.540 [Ex Parte Communications](#)
- 5300.550 [Form of Pleadings and Other Papers \(Repealed\)](#)
- 5300.560 [Appearances](#)
- 5300.570 [Place and Manner of Filing Papers \(Repealed\)](#)

SUBPART F: COMPLAINT AND ANSWER

Section

- 5300.610 [Filing of Complaint](#)
- 5300.620 [Service of Complaint](#)
- 5300.625 [Elections in Real Estate Transaction Cases](#)
- 5300.630 [Notice of Hearing](#)
- 5300.640 [Answer](#)
- 5300.650 [Amendments to Pleadings](#)
- 5300.660 [Substitution and Addition of Parties](#)

SUBPART G: DISCOVERY AND PRACTICE

Section

- 5300.710 [Prehearing Memorandum](#)
- 5300.715 [Discovery for Alternative Hearing Procedure Matters](#)
- 5300.720 [Discovery](#)
- 5300.725 [Filing of Disclosure Information and Discovery Material](#)
- 5300.730 [Motions and Objections](#)
- 5300.735 [Summary Decision](#)
- 5300.740 [Interlocutory Appeals](#)
- 5300.745 [Admission of Fact or of Genuineness of Documents](#)
- 5300.750 [Hearing Procedures](#)
- 5300.760 [Preparation of Recommended Order and Decision](#)
- 5300.762 [Preparation and Issuance of Final Order in Alternative Hearing Procedure Proceedings](#)
- 5300.765 [Petitions for Fees and/or Costs](#)
- 5300.770 [Settlement \(Repealed\)](#)
- 5300.780 [Voluntary Dismissal](#)
- 5300.782 [Authority for Sections 5300.783-5300.787 \(Repealed\)](#)
- 5300.783 [Fees and Costs \(Repealed\)](#)
- 5300.784 [Motion for Fees or Costs \(Repealed\)](#)
- 5300.785 [Responses to Motions for Fees or Costs \(Repealed\)](#)
- 5300.786 [Extensions of Time \(Repealed\)](#)

5300.787 [Supplemented Record \(Repealed\)](#)

SUBPART H: PRACTICE IN FRONT OF THE COMMISSION

Section

- 5300.805 [Scope of Motion Practice](#)
- 5300.810 [Recommended Order Not Final \(Renumbered\)](#)
- 5300.815 [Form of Motions and Objections](#)
- 5300.820 [Exceptions to Recommended Order \(Renumbered\)](#)
- 5300.825 [Presentation of Motions](#)
- 5300.830 [Responses to Exceptions \(Renumbered\)](#)
- 5300.835 [Emergency Motions](#)
- 5300.840 [Extension of Time \(Renumbered\)](#)
- 5300.845 [Agreed Motions and Orders](#)
- 5300.850 [Oral Argument \(Renumbered\)](#)
- 5300.855 [Extension of Time](#)
- 5300.860 [Form of Pleadings and Other Papers \(Renumbered\)](#)
- 5300.865 [Style of Documents for Commission Consideration](#)
- 5300.870 [Ex Parte Communications \(Renumbered\)](#)
- 5300.880 [Brief of Department \(Renumbered\)](#)

SUBPART I: REVIEW OF RECOMMENDED ORDER AND DECISION

Section

- 5300.910 [Finality of Recommended Order](#)
- 5300.920 [Exceptions to Recommended Order](#)
- 5300.930 [Responses to Exceptions](#)
- 5300.940 [Extensions of Time](#)
- 5300.945 [Acceptance of the Recommended Order for Review](#)
- 5300.950 [Oral Argument](#)
- 5300.960 [Form of Pleadings and Other Papers](#)
- 5300.970 [Ex Parte Communications](#)
- 5300.980 [Brief by Department](#)

SUBPART J: REMANDMENT

Section

- 5300.1010 [Request to Present Additional Evidence](#)
- 5300.1020 [Motion for Rehearing Before an Administrative Law Judge](#)
- 5300.1030 [Remandment on the Commission's Own Motion](#)
- 5300.1040 [Remand Proceedings](#)
- 5300.1050 [Rehearing Before Full Commission \(Renumbered\)](#)
- 5300.1060 [Modification of Commission Order \(Renumbered\)](#)

SUBPART K: ORDER AND DECISION OF THE COMMISSION

Section

- 5300.1110 [Commissioners Participating](#)
- 5300.1120 [Standard of Review](#)
- 5300.1130 [Proposal for Decision](#)
- 5300.1140 [Order and Decision](#)
- 5300.1145 [Interest](#)
- 5300.1150 [Rehearing Before Full Commission](#)
- 5300.1160 [Modification of Commission Order](#)
- 5300.1170 [Interlocutory Appeals](#)

AUTHORITY: Implementing Articles 8, 8A and 8B and authorized by Section 8-102(E) of the Illinois Human Rights Act [775 ILCS 5/8-102(E) and Arts. 8, 8A and 8B].

SOURCE: Filed November 15, 1975 by the Fair Employment Practices Commission; emergency amendment at 2 Ill. Reg. 12, p. 11, effective March 24, 1978, for a maximum of 150 days; amended at 3 Ill. Reg. 9, p. 40, effective March 1, 1979; amended at 3 Ill. Reg. 15, p. 100, effective April 9, 1979; transferred to the Human Rights Commission by the Illinois Human Rights Act, effective July 1, 1980; emergency amendment at 4 Ill. Reg. 39, p. 334, effective September 17, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 2709, effective March 2, 1981; amended at 7 Ill. Reg. 9298, effective July 25, 1983; codified at 8 Ill. Reg. 18887; amended at 9 Ill. Reg. 6207, effective April 24, 1985; amended at 16 Ill. Reg. 7838, effective June 1, 1992; emergency amendment at 20 Ill. Reg. 410, effective January 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 7820, effective June 1, 1996; amended at 22 Ill. Reg. 1336, effective January 1, 1998.

SUBPART A: INTERPRETATIONS

Section 5300.10 Definition of Terms

Where used in this Part, unless the context otherwise clearly requires:

The term "Act" shall mean the Illinois Human Rights Act (Ill. Rev. Stat. 1991, ch. 68, par. 1-101 through 10-103).

The term "Administrative Law Judge" shall refer to a hearing officer appointed by the Commission pursuant to Section 8-102(D) of the Act.

The term "Aggrieved Party" shall mean a Person who is alleged or proven to have been injured by a civil rights violation or believes he or she will be injured

by a civil rights violation under Article 3 of the Act that is about to occur. (Section 1-103 of the Act)

The term "Charge" shall mean an allegation of a civil rights violation filed with or initiated by the Department in accordance with the provisions of the Act and this Part.

The term "Civil Rights Violation" shall refer to any of the acts or practices constituting civil rights violations under Sections 2-102, 2-103, 2-105(C), 3-102, 3-102.1, 3-103, 3-104, 3-104.1, 3-105, 4-102, 4-103, 5-102, 5A-102 and 6-101 of the Act.

The term "Commission" shall mean the Illinois Human Rights Commission.

The term "Commissioner" shall mean any duly appointed member of the Human Rights Commission including, unless the context otherwise requires, the Chairperson.

The term "Complainant" shall mean a person who files a Charge with the Department, including the Department in the case of a Charge initiated by the Department itself; said term shall have the same meaning in connection with a Complaint filed by the Department or by an Aggrieved Party with the Commission.

The term "Complaint" shall mean a written Complaint for hearing filed by the Department or by an Aggrieved Party with the Commission in accordance with the Act and this Part.

The term "Department" shall mean the Department of Human Rights.

The term "Director" shall mean the Director of the Department or a duly authorized designee.

The term "Executive Director" shall mean the Executive Director of the Commission or a duly authorized designee.

The term "Party" shall refer to a Person designated as Complainant or Respondent in a Charge or Complaint.

The term "Person" shall have the same meaning as prescribed in Section 1-103 of the Act.

The term "Respondent" shall mean a Person against whom a Charge or Complaint is filed in accordance with the Act and this Part.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.20 Computation of Time

For purposes of computing any period of time provided for under the Act or this Part, the date of any act, event, service or default from which such period of time begins to run shall not be included. If the last day of any such period of time shall fall on a

Saturday, Sunday or legal State holiday, such time period shall continue to run until the end of the next day which is not a Saturday, Sunday or legal State holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal State holidays shall be excluded from the computation. Whenever a time period commences upon a Person's receipt of service or notice, and service is by mail, receipt shall be deemed to occur on the fourth day after mailing.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.30 Service of Pleadings

a) Manner of Service. Unless otherwise provided, all motions, orders, notices and other pleadings required to be served under the Act or this Part shall be served either personally or by first-class mail.

b) Proof of Service. Proof of Service shall be filed when service is required. Proof of service shall consist of the statement of the individual making service, specifying the manner and date of such service. If the Person making service is not an attorney, the statement shall be verified.

c) Effective Date of Service by Mail. Service by mail shall be deemed complete four days after mailing of the document, properly addressed and posted for delivery, to the Person to be served.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.40 Filing

a) All documents and pleadings required by the Act or this Part to be filed with the Commission shall be deemed filed when received in the Commission's Chicago or Springfield office. An item properly received by mail shall be deemed to have been filed on the date specified in the applicable proof of mailing. Proof of mailing shall be made by filing with the Commission a certificate of the attorney, or the affidavit of a person who is not an attorney, stating the date and place of mailing and the fact that proper postage was prepaid. The certificate or affidavit shall be filed with the Commission at the

same time the item to which it refers is filed. If the certificate or affidavit does not accompany an item filed by mail, an item received by mail shall be deemed to have been filed when postmarked, properly addressed and posted for delivery.

b) All papers and copies thereof for filing and service shall be typewritten on white paper 8 1/2 by 11 inches in approximate size. Copies may be reproduced by any printing or duplicating process providing a clear image.

c) Each document shall bear on the first page the caption, descriptive title, the Charge numbers assigned by the Department, and the Administrative Law Section (ALS) file number, and shall identify the Party on whose behalf it is to be filed. For all documents in any matter which is proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act, the words "alternative hearing procedure" and the name of the Administrative Law Judge hearing the matter shall be contained in the caption following the ALS file number. The final page of each document shall contain the name, address, and telephone number of the attorney in active charge of the case, or of the Party if appearing pro se.

d) If the matter is pending before an Administrative Law Judge, the original and one copy of each document shall be filed.

e) Except for a Request for Review and documents in support of a Request for Review, if a document is to be considered by a Commission panel, then the original and five copies of the document must be filed. If the document is to be considered by the full Commission, then the original and 15 copies must be filed. If a document is a Request for Review or is in support of a Request for Review, then only the original must be filed. The following documents are considered documents in support of a Request for Review: motion for extension of time, response to Request for Review, reply to response to Request for Review, and argument in support of Request for Review.

f) Except as otherwise provided, all pleadings and other papers required to be served on a Party shall be

filed as follows:

1) In matters pending before an Administrative Law Judge, such pleadings and papers shall be filed in the Commission office to which that Administrative Law Judge is assigned;

2) If the document is to be considered by a Commission panel or the full Commission, the document shall be filed with the Executive Director in the Commission's Chicago office.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.50 Separability

In the event any provision or term of this Part, or any amendment thereto, is determined by a court or other authority of competent jurisdiction to be invalid, such determination shall not affect the remaining provisions which shall continue in full force and effect.

SUBPART B: RECORDS AND WITNESSES

Section 5300.210 Subpoenas

a) Issuance

1) Subpoenas shall be issued by a Commissioner to compel the attendance of a witness or the production of books, payrolls, records, correspondence, documents, papers or other evidence under the following circumstances:

A) At the instance of the Department to facilitate its investigation of a Charge; or

B) At the instance of a Party to the proceedings, in connection with a hearing convened pursuant to this Part; or

C) At the instance of a Party to the proceedings, solely to obtain the production of books, payrolls, records, correspondence, documents, papers or other evidence from non-parties in anticipation of a hearing convened pursuant to this Part. Subpoenas issued in anticipation of a hearing may issue at any

time subsequent to the time all Respondents have answered the Complaint or are required to answer the Complaint and not prior to that time, except by agreement of the Parties or with leave of the Administrative Law Judge. This Section does not confer a right on a Party to take a deposition of any Person.

2) Blank subpoenas may be obtained for use pursuant to this Subsection by applying therefor to the Executive Director. The applicant shall specify the Charge or Complaint for which the subpoena is to be used and the type of subpoena requested.

b) Witness and Mileage Fees - The cost of service and witness and mileage fees shall be borne by the Person requesting the subpoena. Witness and mileage fees shall be the same as are paid witnesses in the circuit courts of the State of Illinois, as set forth in Section 47 of the Fees and Salaries Act [55 ILCS 45/47].

c) Service and Contents - The Person requesting a subpoena shall be responsible for its service on the subpoenaed person by personal service, by registered or certified mail or by leaving a copy at the principal office or place of business of a subpoenaed corporation or partnership. A subpoena shall be served reasonably in advance of its return date. The subpoena shall state the name and address of the Person initiating its issuance, and shall identify the Person, or evidence subpoenaed and the Person to whom and the place at which, date and time when it is returnable. The Person requesting the subpoena shall also serve a copy of the subpoena upon all Parties of record. Service of the copy of the subpoena on the Parties may be by first-class mail.

d) Petition to Quash or Modify - Within five days after service of a subpoena on any Person and service of copies of the subpoena on the Parties, such Person or any Party may file a petition to quash or modify said subpoena, stating reasons in support of such relief. Such a petition shall be filed with the Commission in the case of a subpoena issued during the Department's investigation of any matter, and with the Administrative Law Judge in the case of a subpoena issued in connection with or in anticipation of a hearing before the Judge. A copy of the petition shall be served at the same time on the Person

serving the subpoena. Within five days after service of such petition, or within any longer period that the Commission or a three-member panel or the Administrative Law Judge may order, the serving Party may file an answering statement thereto. A hearing may be held in such a dispute in the discretion of the Commission or Administrative Law Judge. When such a petition is properly filed with the Commission, the Commission may refer the question to an Administrative Law Judge for hearing but the final decision will be by the Commission. Whenever a petition to quash a subpoena is properly filed under this Section, the petitioner shall not be required to respond to such subpoena until the petition has been ruled upon.

e) Enforcement - Whenever any Person shall knowingly fail or refuse to comply with a subpoena served in accordance herewith, the Commission, at the instance of the Person serving the subpoena, shall petition the appropriate circuit court pursuant to Section 8-104(E) of the Act for an order enforcing said subpoena.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.220 Access to Commission Records

a) Request for Review Records -- Except as otherwise provided in this Part, the record in every charge considered by the Commission on a request for review shall be confidential and not subject to public disclosure; Provided that the parties to such a charge and the Department shall be allowed access to the record upon making suitable arrangements therefor at any time after final disposition by the Commission of the request for review.

b) Hearing Records -- The official record in every Complaint before the Commission or an Administrative Law Judge shall consist of the charge, Complaint and notice of public hearing, and all subsequent pleadings, notices, motions, evidence received and statements of matters officially noticed, offers of proof and objections and rulings thereon, transcripts, briefs and memoranda received from the parties or the Department for the consideration of the Commission or Administrative Law Judge, orders and decisions and exceptions and responses thereto,

and amendments to any of the above. The official record (except such evidence as is placed under protective order by the Administrative Law Judge or the Commission) shall be available for public inspection upon making appropriate arrangements with the Commission employee having custody of such record, at any time after issuance of the notice of hearing. The parties shall have access to the entire official record.

c) Retention of Records -- The Commission shall maintain in its offices all files available for inspection by the public or a party pursuant to subsections (a) and (b) of this Section, for the full period during which such file is active and for an additional period of at least two years from the date when all proceedings (including any proceedings pursuant to the Administrative Review Law [735 ILCS 5/Art. III]) have been disposed of. Final Orders and Decisions of the Commission, Final Orders of Administrative Law Judges in cases under the alternative hearing procedure and Orders pursuant to requests for review will be retained as part of the permanent record of the Commission.

d) Copies -- The Commission shall not provide copies of documents which are available for inspection by any person under this Subpart B, except to the extent that extra copies may exist in the Commission's files.

e) Place of Inspection -- Inspection of any files or documents which are available for that purpose shall be permitted only at the office of the Commission at which such file or document is maintained.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

SUBPART C: SETTLEMENTS

Section 5300.310 Settlement Agreements

a) If terms of settlement are agreed to by the Parties to a Charge prior to the filing of a Complaint and if the terms of settlement are approved by the Department pursuant to Section 7A-103 of the Act, the proposed settlement agreement shall be filed by the Department with the Commission at its Chicago office.

b) If terms of settlement are agreed to by the Parties after a Complaint has been filed, the Parties shall submit the terms of settlement to the Administrative Law Judge assigned to the case. The Administrative Law Judge shall transmit the terms to the Commission for approval pursuant to Section 5300.320 of this Part. If there is no Administrative Law Judge assigned to the case, the Parties shall submit the terms directly to the Executive Director of the Commission.

c) Terms of settlement shall be in writing and signed by the Parties.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.320 Consideration by Commission

Proposed terms of settlement shall be considered by a three-member panel of the Commission. If the proposed terms are unambiguously drawn, not inconsistent with the Act, and knowingly and voluntarily entered into, the Commission shall approve them by entering an order incorporating the terms of settlement and dismissing the charge pursuant thereto. Said order shall be served by the Commission on the Department and the parties.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.330 Non-Compliance

a) When the Department believes that a party has violated written terms of settlement approved by the Commission, it may file a notice with the Commission, with service upon all parties, specifying the nature of the alleged violation and praying for an order remanding the matter for hearing or authorizing the Department to seek judicial enforcement.

b) Whenever the Department files a notice of a violation, the party allegedly violating the Commission's order may file a response with the Commission within fifteen (15) days after service of the notice upon it. A three-member panel of the Commission shall consider the Department's notice and the response, if any, and shall enter an order,

with service on the parties and the Department, which shall either direct the Department to seek judicial enforcement pursuant to Section 8-111(b) of the Act, remand the matter to an Administrative Law Judge, or find that no violation exists. If the Commission determines that a violation has occurred, it will instruct the Department to seek judicial enforcement. If the Commission is unable to determine whether or not a violation has occurred, it will remand the matter to an Administrative Law Judge for a hearing.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.400 Applicability of the Subpart

a) Sections 5300.410 through 5300.495, inclusive, of Subpart D of this Part apply only to requests for review in cases where the perfected charge was filed before January 1, 1996. Pursuant to Section 8-103 of the Act, the Commission does not have jurisdiction over requests for review in cases where the "cause of action" was filed on or after January 1, 1996.

b) After January 1, 1996, all requests for review received by the Commission will be evaluated by the staff to determine if the perfected charge in the case was filed on or after January 1, 1996. If the perfected charge was, in fact, filed on or after January 1, 1996, the staff of the Commission will stamp the date the request for review was received by the Commission on the face of that document and then forward it to the Department for processing pursuant to Section 7-101.1 of the Act.

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)

SUBPART D: REQUEST FOR REVIEW

Section 5300.410 Filing with Commission

A party may request review by the Commission of a decision by the Department to dismiss or default, by filing a request therefor with the Commission at its Chicago office within thirty (30) days of receipt of the Department's notice of its decision. Such request

may be accompanied by argument and supporting materials.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.420 Notice by Commission

The Commission shall notify the Department and other parties to the charge of the filing of a timely request for review. Notice to the Department shall be accompanied by a copy of the request. Only the Department and the party requesting review shall participate in any proceedings under this Subpart.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.430 Response by Department

Within thirty (30) days of receipt of the Commission's notice of the filing of a request for review, the Department shall file a response with the Commission, serving a copy at the same time on the party filing the request. If the Department opposes the request, its response shall consist of a copy of the charge and any amendments thereto, the Department's investigation report, the results of any additional investigation conducted by the Department and a statement of the Department's position, including proposed findings to support the dismissal. If the Department does not oppose the request, its response may consist only of a statement of its position.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.440 Reply to Response

The party filing the request may, within fifteen (15) days of service of the response, file a reply with the Commission, with service on the Department at the same time. Only replies which are limited to addressing issues raised in the response will be considered by the Commission.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.450 Extensions of Time

a) A Party's timely Request for Review may seek additional time to file argument and material in support thereof. A request for additional time not exceeding thirty (30) days shall be granted by the Commission through the issuance by the Executive Director of a written order served on the Party filing the request and on the Department. A request for additional time exceeding the aforementioned limitation shall be granted by the Commission, through a three-member panel, only upon a showing of special circumstances. Any additional argument or material filed pursuant to this Subsection shall be served at the same time on the Department by the Party filing it. The Department shall file its response in accordance with Section 5300.430 within thirty (30) days after receipt of the additional argument or materials.

b) The Department may request additional time to file its response by filing a written motion with the Commission, serving a copy at the same time on the Party filing the Request for Review. A request for additional time not exceeding thirty (30) days shall be granted by the Commission through the issuance by the Executive Director of a written order served on the Party filing the Request for Review and on the Department. A request for additional time exceeding the aforementioned limitation will be granted by the Commission, through a three-member panel, only upon a showing of special circumstances.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.460 Consideration of Request for Review

The Commission, through a panel of three members, shall review all pleadings filed in accordance with this Subpart and shall determine the merits of the Request for Review; however, if the Department's response states that it does not oppose the Request for Review, the Executive Director is authorized to promptly enter an order on behalf of the Commission vacating the dismissal or default. Oral argument before the Commission on Requests for Review will not be permitted.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.470 Additional Information or Referral for Hearing

a) Additional Information -- Whenever the Commission determines that additional information is necessary in order for it to reach a decision on a request for review, it shall order that the Department or the party making the request file such additional information for its consideration.

b) Hearing -- Whenever the Commission determines that a hearing should be held on a factual issue before it makes its decision on a request for review, it shall enter an order referring the matter to the Chief Administrative Law Judge. The order shall specify the nature and scope of the proceedings to be had. After conclusion of the proceedings, the Administrative Law Judge shall file with the Commission a report which shall include findings of fact and conclusions based thereon, serving copies at the same time on the Department and the party requesting review.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.480 Decision

If the Commission determines that the Department's decision should be sustained, it shall enter an order stating its findings and reasons therefor, and, in the case of a request for review of a decision to default, shall further order that the matter be referred to an Administrative Law Judge for a hearing on damages. Otherwise, it shall order that the dismissal or default of the Department be vacated. The Commission shall immediately cause the order to be served on the Department and all parties to the charge.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.490 Tolling of Time Period

The time limitation established in paragraph (G) of Section 7-102 of the Act for the Department's filing of a complaint with the Commission shall be tolled

during the period between issuance of the Department's notice of dismissal or default until entry of the Commission's order pursuant to Section 5300.480 hereof.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.495 Pending Requests

All requests for review pending on the effective date of this Part shall beconsidered in accordance with the provisions of this Subpart D; Provided, the Department shall have thirty (30) days from the effective date of this Part to file its response in accordance with Section 5300.430.

SUBPART E: HEARINGS

Section 5300.510 General

All parties shall have the right to be represented by counsel, to be present and to participate in any hearing under this Part, except a hearing under Section 5300.470(b) of this Part in which only the Department and the party filing the Request shall participate. The right to participate shall include the rights to call, examine and cross-examine witnesses and to introduce evidence into the record.

Section 5300.515 Election to Proceed Under the Alternative Hearing Procedure

a) Parties may elect to proceed under the alternative hearing procedure set forth in Section 8A-102.5 of the Act. A unanimous election to proceed under the alternative hearing procedure must be stipulated in writing by all Parties.

b) For any Complaint filed with the Commission after the effective date of this Section, a written election to proceed by right under the alternative hearing procedure must be filed with the Commission on or before 30 days after the filing of all Respondents' answers to the Complaint, unless the Chief Administrative Law Judge on motion and for good cause shown extends the time, and in any event must be filed prior to the service by any Party of any

discovery request, whichever comes first.

c) For any Complaint pending before the Commission on or before the effective date of this Section to which all Respondents have not yet answered or all answers were not filed at least 31 days prior and no discovery request has yet been served, a written election to proceed by right under the alternative hearing procedure must be filed with the Commission on or before 30 days after the filing of all Respondents' answers to the Complaint, unless the Chief Administrative Law Judge on motion and for good cause shown extends the time, and in any event must be filed prior to the service by any Party of any discovery request, whichever comes first.

d) For any Complaint pending before the Commission on or before the effective date of this Section to which all Respondents' answers were filed at least 31 days prior or any discovery request has already been served, the Parties may file with the Chief Administrative Law Judge a joint motion requesting leave to elect to proceed thereafter under the alternative hearing procedure; the Chief Administrative Law Judge may, in his/her discretion, grant or deny such motion taking into consideration the present status of the case, the possible judicial economy and the efficient usage of the resources of the Parties and the Commission.

e) Any Party may obtain from the Commission the list of the pool of Administrative Law Judges currently available for the alternative hearing procedure at the Chicago or the Springfield office by telephonic or written request.

f) The written election to proceed under the alternative hearing procedure, signed by all Parties, shall be entitled "Stipulation Of Election Of Alternative Hearing Procedure Pursuant to Section 8A-102.5" and shall state:

The Parties hereby stipulate to proceed under the alternative hearing procedure set forth in Section 8A-102.5 of the Illinois Human Rights Act. The parties acknowledge that they have certain rights under the regular hearing procedure, including but not limited to more discovery and the right of appeal. The parties knowingly and voluntarily waive those rights.

The Parties hereby select Administrative Law Judge _____ to hear this matter; or

The Parties shall inform the Commission in writing of their selection of an Administrative Law Judge within 10 days after the filing of this stipulation. The Parties hereby acknowledge that there is no right to vacate or revoke this stipulation except if the selected Administrative Law Judge becomes unavailable to issue a Final Order disposing of the Complaint.

The Parties hereby acknowledge that there shall be only limited discovery available to them as specified in Section 5300.715 of the Commission's Procedural Rules.

The Parties hereby acknowledge that there is no right of appeal from the selected Administrative Law Judge's Final Order disposing of the Complaint based upon a dispositive motion or upon the pleadings and evidence presented at hearing, and hereby waive all right of appeal except for Orders procured by fraud or duress.

g) If a selected Administrative Law Judge becomes unavailable due to death, leaving the Commission's employment or any other cause, during the proceeding of a matter and is thereby unavailable to issue a Final Order disposing of the Complaint, within 30 days after the receipt of a written notice of such unavailability from the Commission, the Parties shall inform the Commission in writing of their selection of another Administrative Law Judge to continue proceeding under the alternative hearing procedure on the matter based on the record to date. If the Parties fail to timely select a successor Administrative Law Judge, the matter shall automatically no longer continue under the alternative hearing procedure and shall be reassigned to an Administrative Law Judge by the Chief Administrative Law Judge pursuant to Section 5300.520(b).

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.520 Conduct of Hearing

a) All hearings hereunder, including hearings under the alternative hearing procedure, shall be conducted consistent with this Part by an Administrative Law Judge who shall be a licensed attorney appointed to be an Administrative Law Judge for the Commission pursuant to Section 8-102(D) of the Act.

b) The Chief Administrative Law Judge shall assign to an Administrative Law Judge each Complaint or other matter on which hearing is required. The Chief Administrative Law Judge may, in his/her discretion, combine several Complaints or requests for review for purposes of hearing and other proceedings, when it is found that sufficient common issues of fact or law are involved. If the Parties timely elect to proceed by right or are granted leave to proceed under the alternative hearing procedure, the Chief Administrative Law Judge shall, if the selected Administrative Law Judge is other than the Administrative Law Judge to whom the Complaint was originally assigned, reassign the Complaint to the selected Administrative Law Judge for hearing and other proceedings. If a Complaint which was proceeding under the alternative hearing procedure ceases to so proceed due to the unavailability of the selected Administrative Law Judge and the Parties' failure to timely select another, the Chief Administrative Law Judge will reassign the Complaint to an Administrative Law Judge for hearing and other proceedings not under the alternative hearing procedure.

c) All hearings once commenced shall continue on successive work days until completed unless the Administrative Law Judge rules otherwise by announcement at the hearing or by appropriate notice to all parties.

d) All hearings shall be open to the public except hearings upon requests for review.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.530 Powers and Duties of Administrative Law Judge

a) Subject to the provisions of the Act and of this Part, the Administrative Law Judge shall have full authority to govern the procedure of the hearing and to admit or exclude testimony or other evidence.

b) The Administrative Law Judge shall rule on all proper motions and objections by any party from the time the Judge is assigned the matter by the Chief Administrative Law Judge or selected by the Parties electing to proceed under the alternative hearing procedure until the Judge's recommended decision and/or Final Order is filed with the Commission or issued to the Parties.

c) The Administrative Law Judge may exclude from the proceedings any person who engages in improper conduct at the hearing. At the request of any party, the Administrative Law Judge shall exclude all witnesses from the hearing room, except that one representative of each party in addition to counsel shall be allowed to remain throughout.

d) The Administrative Law Judge may grant continuances for good cause shown. Requests for continuance shall be made in writing to the Administrative Law Judge sufficiently in advance of a scheduled hearing to permit reasonable notice to all parties.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.540 Ex Parte Communications

A party or his representative shall not communicate, directly or indirectly, with an Administrative Law Judge in connection with any issue of fact or in connection with any other issue except upon notice and opportunity for all parties to participate.

Section 5300.550 Form of Pleadings and Other Papers (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.560 Appearances

a) Each Complainant and Respondent shall enter a written appearance in such Party's own behalf or by counsel as soon as practicable after issuance of the Complaint, serving copies at the same time on all Parties. An appearance by a Party or counsel with the Department prior to issuance of the Complaint shall constitute an appearance before the Commission, except when:

1) The Complaint is filed by the Complainant pursuant to Section 7A-102(G)(2) of the Act, or

2) The appearance explicitly limits representation to proceedings conducted by the Department.

b) An attorney may not withdraw his or her appearance for a Party without leave of the Administrative Law Judge, nor unless reasonable notice of a motion to withdraw has been given by personal service or by certified mail directed to the Party represented at his or her last known address.

c) An attorney who is not a member of the Illinois Bar may be granted leave to appear on behalf of a Party on a pro hac vice basis in the same manner and circumstances as provided in Illinois Supreme Court Rule 707, (Ill. Rev. Stat. 1991, ch. 110A, par. 707).

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.570 Place and Manner of Filing Papers (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

SUBPART F: COMPLAINT AND ANSWER

Section 5300.610 Filing of Complaint

Complaints shall be filed by the Department or, pursuant to Section 7A-102(G) of the Act, by the Aggrieved Party with the Chief Administrative Law Judge. Where the Department files the Complaint, it

shall immediately serve a Notice of Filing on all Parties.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.620 Service of Complaint

Within five days after a Complaint is duly filed with the Commission by the Department or by an Aggrieved Party, the Commission shall cause it to be served on all Parties either personally or by depositing copies in the mail, properly addressed and posted, for certified delivery.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.625 Elections in Real Estate Transaction Cases

When a Complaint is filed under Section 7B-102(F) of the Act, a Complainant, a Respondent, or an Aggrieved Party on whose behalf the Complaint was filed, may elect to have the claims asserted in that Complaint decided in a civil action in a circuit court of Illinois. The election must be made not later than 20 days after the receipt by the electing Person of service of the Complaint by the Commission. The Person making the election shall file it with the Commission and shall give notice of doing so to the Department and to all other Complainants, Respondents and Aggrieved Parties to whom the charge relates. If an election is made, the Commission will act no further on the Complaint. The file on the Complaint will be closed by administrative action. If an election is not made, the Commission will continue proceedings on the Complaint in accordance with the Act and this Part.

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.630 Notice of Hearing

The Complaint shall be accompanied by a Notice of Hearing which shall state the time, place and nature of the hearing upon the Complaint, the legal authority and jurisdiction under which the hearing is to be held, and a reference to the particular sections

of the Act and Rules involved. The hearing shall be scheduled to commence not less than thirty (30) nor more than ninety (90) days following service of the Complaint, and at a site within one hundred (100) miles of the place where the act or practice complained of is alleged to have occurred; provided, however, that the hearing may be convened on any other date or at any other place upon the consent of the Parties. All Parties shall be notified in the Notice of Hearing of the Administrative Judge to whom the Complaint has been assigned. All pleadings and other documents related to the Complaint shall be directed to such Administrative Law Judge.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.640 Answer

a) Time of Filing -- Each Respondent shall file an answer to the Complaint within thirty (30) days of the date of service of the Complaint, but the Administrative Law Judge to whom the Complaint is assigned may, upon motion and for good cause shown, grant further time for the filing of an answer. In the event a Respondent files a motion to dismiss the Complaint within the said thirty (30) days and said motion is denied, such Respondent shall have fifteen (15) days from the date of service of an order of denial within which to file its answer. In addition, the Administrative Law Judge may require a Respondent to file an answer or supplemental answer within a reasonable time following an amendment to the Complaint.

b) Service -- An answer, supplemental answer, or motion to dismiss or response thereto, shall be served upon all Parties, and upon the Department to the attention of its General Counsel.

c) Contents -- The answer shall be in writing and signed under oath or affirmation, and shall contain:

1) A specific admission or denial of, or assertion that the Respondent is without sufficient knowledge or information to form a belief with respect to, each and every allegation of the Complaint;

2) A statement of any matter constituting a defense against any allegations of the Complaint;

3) The name, post office address and telephone number of Respondent and Respondent's counsel.

d) Failure To Deny Allegation -- Any allegation in the Complaint which is not denied or admitted in the answer shall be deemed admitted, unless the Respondent shall state in the answer that it is without sufficient knowledge or information to form a belief with respect to such allegation.

e) New Matter in Answer -- Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply thereto being filed, unless a reply is ordered by the Administrative Law Judge conducting the hearing.

f) Failure to File Answer -- The failure of a Respondent to file an answer to the Complaint as hereinabove provided shall be deemed to constitute an admission of the allegations contained in the Complaint.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.650 Amendments to Pleadings

a) At any time prior to issuance of the Administrative Law Judge's Recommended Order and Decision or Final Order in a case proceeding under the alternative hearing procedure, the pleadings may be amended for good cause shown. A motion to amend under this Subsection shall be in writing, and shall state the specific amendments proposed and the reasons therefor. Where the Department filed the Complaint in the case, a motion to amend the Complaint may be made by either the Department or the Complainant. A motion to amend a pleading shall be served upon all Parties, and upon the Department to the attention of its Chief Legal Counsel. Where leave is granted to file an amended Complaint, it must be served upon all Parties of record and the Department by the Complainant, or by the Department if it moved to amend, within 7 days after the date of the Order granting leave to file the amended Complaint, or within such additional time as the Administrative Law Judge may order. It is not

the obligation of the Commission to serve amended Complaints.

b) Amendments to the Complaint may encompass any unlawful discrimination which is like or reasonably related to the charge and grows out of the allegations in such charge, including, but not limited to, allegations of retaliation.

c) A motion made prior to the close of a hearing that a pleading be amended to conform to the evidence may be addressed orally on the record to the Administrative Law Judge conducting the hearing and shall be granted for good cause shown.

d) An amendment to a pleading shall relate back to the date of the filing of the original pleading.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.660 Substitution and Addition of Parties

a) A Complaint may be amended by the Complainant to substitute or name additional Parties Respondent if such parties are successors or assigns of a named Respondent. Mere misnomer of a Party, however, shall not be grounds for dismissal and may be cured at any time by amendment of the pleadings. A Person may be added as Party Respondent, even if that Person is not a successor or an assign of the named Respondent, if the following terms and conditions are met:

1) The Charge in the case was filed within 180 days after the date of the civil rights violation allegedly committed by the Person sought to be added as a Party Respondent;

2) The failure to join the Person as a Party Respondent was inadvertent;

3) The Person sought to be added as a Party Respondent was given notice of the filing of the Charge at the time the original Charge was filed;

4) The nature of the original Charge was such that the Person sought to be added knew, within the 180 day period, that the Charge grew out of a transaction

or occurrence involving or concerning him or her;

5) The addition of the Person sought to be named as a Party Respondent does not raise new factual questions which were not considered by the Department of Human Rights in its investigation; and

6) The cause of action alleged against the Person sought to be made a Party Respondent in the case arises out of the same transaction or occurrence set out in the original Complaint.

b) If a Party to a Complaint dies, the proper Party or Parties may be substituted upon motion. If a motion to substitute is not filed within 90 days after the death is suggested of record, the Complaint may be dismissed as to the deceased Party.

c) No Person shall be added as a Party Respondent except as provided in this Section.

d) If substitution of a Party occurs in a matter proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act, the election of the alternative hearing procedure remains effective and is binding on the substituted or successor Party and the matter shall continue to proceed under the alternative hearing procedure.

e) If addition of a Party occurs in a matter proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act, the additional Party shall within 30 days after being made a party in the matter inform the Commission in writing of his/her/its stipulation to continue proceeding under the alternative hearing procedure on the matter before the selected Administrative Law Judge based on the record to date. If the additional Party fails to timely so stipulate, the matter shall automatically no longer continue under the alternative hearing procedure and may be reassigned to another Administrative Law Judge by the Chief Administrative Law Judge.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

SUBPART G: DISCOVERY AND PRACTICE

Section 5300.710 Prehearing Memorandum

a) The notice of public hearing issued in conjunction with a Complaint shall be accompanied by a description of the contents to be included in a prehearing memorandum to be completed jointly by the parties. The purpose of the memorandum shall be to ascertain the positions of the parties and to reach agreements on stipulations of fact, admission of documents and other matters that will expedite the hearing and determination of the Complaint. Once the parties have completed the memorandum, the Administrative Law Judge may issue a pre-hearing Order reflecting matters agreed to and rulings as to disputed matters. The Administrative Law Judge may waive the preparation of a prehearing memorandum when a party is not represented by counsel. The Administrative Law Judge may order a prehearing conference, if one is deemed necessary.

b) Should a party fail substantially to comply with the directions set out for the pre-hearing memorandum or fail to appear at a scheduled pre-hearing conference, the Administrative Law Judge, on motion, may file a recommendation of dismissal or default or issue a Final Order disposing of a case proceeding under the alternative hearing procedure or other appropriate Order imposing sanctions as justice may require.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.715 Discovery for Alternative Hearing Procedure Matters

a) Initial Disclosure of Information -- For all Complaints proceeding under the alternative hearing procedure, the Parties shall have an initial duty of disclosure as follows:

1) Time of Disclosure and Continuing Duty -- The Parties shall make the initial disclosure required by this rule as fully as then possible within 90 days after the filing of the stipulation to proceed under the alternative hearing procedure unless the Administrative Law Judge, on motion and for good cause shown, shortens or extends the time. Upon service of a disclosure on another Party, the disclosing Party shall file only a notice of the service

of the disclosure with the Commission. The duty to provide disclosures as delineated in this rule shall be a continuing duty, and each Party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing Party. All disclosures shall include all information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

2) Prompt Disclosure of Information -- Within the time set forth in this subsection (a)(1), each Party shall disclose in writing to every other Party:

A) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis of each claim or defense.

B) The names, addresses, and telephone numbers of all persons whom the Party believes may have knowledge or information relevant to the events, transactions or occurrences that gave rise to the action, claim or defense, and the nature of the knowledge or information each such individual is believed to possess.

C) The names, addresses, and telephone numbers of all persons who have given statements regarding the action, claim or defense, whether written or recorded, signed or unsigned, and of the custodian of the copies of those statements.

D) The names, addresses, and telephone numbers of each person whom the disclosing Party expects to call as an opinion witness at trial, the subject matter on which the opinion witness is expected to testify, the conclusions and opinions of the opinion witness and the bases therefor, the qualifications of the opinion witness, and copies of any reports prepared by the opinion witness.

E) A computation and the measure of damages alleged by the disclosing Party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damages witnesses.

F) The existence, location, custodian, and general description of any tangible evidence or documents

that the disclosing Party plans to use at trial.

G) A list of the documents, or in the case of voluminous documentary information, a list of the categories of documents, known by a Party to exist whether or not in the Party's possession, custody or control and which that Party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the dates upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document shall be indicated. A Party who produces documents for inspection shall produce them as they are kept in the usual course of business.

3) Each disclosure shall be made in writing, accompanied by the affidavit of an attorney or a Party which affirmatively states that the disclosure is complete and correct as of the date of the disclosure and that all reasonable attempts to comply with the provisions of this rule have been made. A copy of such affidavit shall be filed with the Commission.

4) In addition to any other sanction the Administrative Law Judge may impose, the Administrative Law Judge shall exclude at hearing any evidence offered by a Party that was not timely disclosed as required by this Section, except for good cause shown.

b) Limited Discovery Procedures -- Except as may otherwise be ordered by the Administrative Law Judge upon motion and for good cause shown, only the following limited discovery is allowed for Complaints proceeding under the alternative hearing procedure. Except as limited herein, the provisions, including service requirements and response time limits, of Section 5300.720 and Section 5300.745 of this Part apply as if fully set out herein.

1) Written Interrogatories -- Each Party may propound to any other Party a total of 20 written interrogatories and supplemental interrogatories in the aggregate, including subparts.

2) Deposition -- An evidence deposition may be taken as of right only under the provisions of Section 8-104(F) of the Act. No discovery deposition may be taken except as allowed by the Administrative Law Judge upon motion and for good cause shown.

3) Production Requests -- Each Party may propound to any other Party a total of 5 requests to produce for inspection, copying or photographing any document, object or tangible thing which is relevant to the subject matter of the Complaint or defense.

4) Requests To Admit -- Each Party may serve on any other Party a total of 10 written requests for the admission by the latter of the truth of any specified relevant fact set forth in the request. Each Party may also serve on any other Party a written request for the admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be furnished with the request unless copies have already been furnished by the requesting Party.

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)

SUBPART G: DISCOVERY AND PRACTICE

Section 5300.720 Discovery

a) For all Complaints not proceeding under the alternative hearing procedure, discovery shall be obtainable through the following methods:

1) Written Interrogatories -- A Party may direct written interrogatories to any other Party, serving copies of such interrogatories at the same time on all other Parties. Such interrogatories shall be restricted to the subject matter of the Complaint or defense and shall avoid undue detail or the imposition of excessive burden or expense on the answering Party. Within 28 days after service of the interrogatories upon the answering Party, the answering Party shall serve upon the propounding Party an answer under oath or affirmation, or an objection, to each interrogatory, serving copies of such answers and objections at the same time on all other Parties. Any objection to an answer or refusal to answer an

interrogatory shall, upon motion of the Party propounding the interrogatory, be ruled upon by the Administrative Law Judge. Where appropriate, a document may be served in answer to an interrogatory. Supplemental interrogatories shall not be allowed except on leave of the Administrative Law Judge for good cause shown.

2) Production, Inspection, Copying or Photographing of Documents and Tangible Things -- A Party, by written request served upon all other Parties, may require any other Party to produce for inspection, copying or photographing any document, object or tangible thing which is relevant to the subject matter of the Complaint or defense. The Party upon whom the request is served shall respond to the request within 28 days, stating with respect to each item or category that inspection and related activities will be permitted as required, unless the request is objected to, in which event the reasons for objection shall be stated. The response shall be served on all Parties. On motion of the requesting Party, the Administrative Law Judge shall rule with respect to such objections.

3) Depositions

A) A deposition may be taken as of right only under the provisions of Section 8-104(F) of the Act.

B) A Party may take discovery depositions either for good cause shown or by agreement. A discovery disposition taken for good cause or by agreement may be taken only upon leave of the Administrative Law Judge. No Party shall serve a notice of deposition for a discovery deposition without leave of the Administrative Law Judge.

b) Prior to the time all Respondents have answered or are required to answer, no discovery procedure shall be noticed or undertaken except by agreement of the Parties or with leave of the Administrative Law Judge for good cause shown.

c) At any time the Administrative Law Judge may, on his/her own motion or on motion of any Party or witness, make such protective Orders as justice and fairness may require, denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage or

oppression.

d) All matters that are privileged against disclosure in civil cases in the courts of the State of Illinois shall be privileged against disclosure through any discovery procedure hereunder. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

e) The types of discovery of information from Parties and witnesses shall be the same as in other civil cases in the circuit courts of this State, except as provided for discovery depositions above. The procedure for obtaining discovery of information from Parties and witnesses shall be as specified in this Part. If this Part does not contain a procedure with respect to a particular type of discovery, the Code of Civil Procedure [735 ILCS 5] will be considered persuasive authority by the Commission. Where the Code of Civil Procedure makes reference to "rules," the applicable Supreme Court Rules on discovery will also be considered.

f) The hearing of a matter shall not be delayed to permit discovery unless due diligence is shown.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.725 Filing of Disclosure Information and Discovery Material

a) All disclosures required in cases under the alternative hearing procedure and all requests for discovery and all responses to requests for discovery shall be served upon other counsel or parties, but shall not be filed with the Commission. The party responsible for service of the disclosure information or the discovery material shall serve a copy of a Certificate of Service with the Commission. The party responsible for service of the disclosure information or the discovery material shall retain the original and become the custodian.

b) If a motion is filed with respect to any disclosure information or discovery material, copies of the

portions of the material in question shall be filed with the motion.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.730 Motions and Objections

a) Motions and objections directed to the Administrative Law Judge pursuant to the authority granted in Section 5300.530(b) of this Part may be stated in writing or on the record except for a motion to amend the pleadings pursuant to Section 5300.650(a) of this Part, which must be in writing.

1) A written motion shall briefly state the Order or relief requested and the specific grounds upon which relief is sought.

2) A written motion shall be served at the same time upon all Parties and filed at the Commission office of the Administrative Law Judge to whom it has been directed.

3) The following motions shall also be served upon the Department:

A) Motion to dismiss and any response thereto pursuant to Section 5300.640(b) of this Part;

B) Motion to amend the pleadings pursuant to Section 5300.650(a) of this Part; and

C) Motion to allow a Commission or Department employee to testify at a hearing pursuant to Section 5300.750(b)(4) of this Part.

b) Except as provided in subsection (f) of this Section, for motions to dismiss the Complaint and motions for summary decision, responses to written motions may be filed by any Party within five days after service of the motion, or within such other period as the Administrative Law Judge may order, and shall be served at the same time upon all other Parties. In deciding whether to extend the period for responding to the motion, the Administrative Law Judge shall consider the complexity of the issues raised by the motion, and the ability of the responding Party to file a response within the five day period. Except under extraordinary

circumstances, the time for responding to a motion shall not exceed 45 days. The Administrative Law Judge may, on his/her own motion or motion of the Department, enter an Order permitting the Department to file a response to a written motion. In deciding whether to allow the Department to file a response, the Administrative Law Judge shall consider:

- 1) Whether resolution of the motion raises issues beyond those involved in the specific case;
- 2) Whether the Department has an interest different from that of the Complainant or Respondent; and
- 3) Whether the Department can articulate a particular point of view better than one or both Parties.

c) Written motions and responses thereto should set forth the arguments and authorities relied upon to permit the Administrative Law Judge to make a decision without oral argument on the motion.

d) Except as provided in subsection (f) of this Section for motions to dismiss and motions for summary decision, except as to motions arising out of Complaints proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act and except for those motions made in the course of public hearing, all motions arising out of Complaints in which the site of the alleged civil rights violation is in Cook County shall be heard at the Commission's office in Chicago. Written Notice of Hearing on such motion shall be filed at the Commission's office in Chicago along with a copy of the motion and served upon all Parties and also upon the Department as specified in subsection (a) of this Section. The Notice of Hearing on the motion shall show the name of the Administrative Law Judge before whom and the date and time when the motion shall be presented. The motion shall be in writing and a copy of the motion or a statement that it previously has been served shall be served with the notice. Copies of all papers to be presented to the Administrative Law Judge with the motion shall be served with the notice or the notice shall state that copies have previously been served. The moving Party shall schedule the motion for hearing by entering the case name, ALS number and the nature of the motion in

the motion book in the Commission's Chicago office.

1) If notice of hearing is given by personal service, the notice shall be delivered before 4:00 P.M. on the second State business day preceding the hearing of the motion.

2) If notice is given by mail, the notice shall be deposited in a United States Post Office or Post Office Box no later than the fifth State business day preceding the hearing of the motion. The certificate of service attached to the motion will be prima facie proof of the date the notice is placed in a Post Office Box.

e) All motions arising out of Complaints in which the site of the alleged civil rights violation is outside Cook County and all motions arising out of Complaints proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act shall be governed by the procedures specified in subsections (a), (b) and (c) of this Section. These motions shall not be noticed for hearing at the Commission's office in Chicago; however, if all of the Parties to a Complaint, except to a Complaint proceeding under the alternative hearing procedure of Section 8A-102.5 of the Act, in which the site of the alleged discrimination is outside Cook County agree to appear for a hearing on a motion at the Commission's Chicago office, the procedure specified in subsection (d) of this Section may be utilized.

f) Regardless of the site of the alleged civil rights violation, all motions to dismiss the Complaint and all motions for summary decision shall be filed and responded to in accordance with the procedures set forth in subsections (a), (b), and (c) of this Section.

g) All motions on Complaints proceeding under the alternative hearing procedure shall be decided by the selected Administrative Law Judge based on the written motions and responses thereto only, except when the Administrative Law Judge deems oral argument useful; then, the Administrative Law Judge shall issue an Order setting a date and time for the motion to be argued. Such oral argument may be set at a Commission office or by telephone conference hearing.

(Source: Amended at 22 Ill. Reg. 1336, effective January 1, 1998)

Section 5300.735 Summary Decision

a) At any time after the service of a Complaint and prior to service of a decision pursuant to Section 8A-102(I), Section 8A-102.5(B)(4) or Section 8B-102(J) of the Act, the Complainant or the Respondent may move with or without supporting affidavits for a summary Order in the moving Party's favor as to all or any part of the relief sought. An Administrative Law Judge may not preclude the filing of a motion for summary decision except within the 60-day period prior to the date set for the hearing on the merits of the Complaint. Once the Administrative Law Judge has set a deadline for the filing of the motions for summary decisions in accordance with this Section, no such motion may be filed after that date without leave of the Administrative Law Judge, even if the hearing on the merits is postponed.

b) Procedure - The non-moving Party may file counter-affidavits prior to the time of the ruling on the motion. The Order sought shall be rendered without delay if the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving Party is entitled to a Recommended Order as a matter of law. An interim recommended summary Order, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the relief to be awarded. The term "without delay" (Section 8-106 of the Act) means that consideration of the motion shall not be stayed without the agreement of the Parties. Further, the Administrative Law Judge may not postpone consideration of the motion until after the public hearing. The term does not mean that motions for summary decision will be given preference over other pending motions in the case at issue or other cases pending in front of the Commission.

c) Affidavits or Motions Made in Bad Faith - If it appears to the satisfaction of the Administrative Law Judge at any time that any affidavit or motion presented pursuant to this Section is presented in bad faith or solely for the purpose of delay, the Administrative Law Judge may recommend that the

Party employing the use of affidavits for dilatory purposes shall pay to the other Party the amount of reasonable expenses incurred as a result of the filing of the affidavit or motion, including reasonable attorney's fees.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.740 Interlocutory Appeals

a) The Commission shall not entertain interlocutory appeals from rulings by an Administrative Law Judge, except when the Administrative Law Judge determines that a specific ruling is of such extraordinary significance that a decision of the Commission is required prior to completion of the case. Only the Administrative Law Judge shall have authority to certify a question for the Commission's consideration.

b) Upon the issuance of an order certifying a question to the Commission, the Administrative Law Division shall transmit to the clerk of the Commission the Administrative Law Judge's order and all pleadings and briefs which were submitted to the Administrative Law Judge concerning the certified matter. The Commission shall consider the matter based upon the documents submitted to the Administrative Law Judge. If additional briefing is required to resolve the question certified to the Commission, the Commission will issue an order requesting supplemental briefs and setting up a schedule for the filing of the supplemental briefs.

(Source: Amended at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.745 Admission of Fact or of Genuineness of Documents

a) Request for Admission of Fact - A Party may serve on any other Party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.

b) Request for Admission of Genuineness of Document - A Party may serve on any other Party a written request for admission of the genuineness of any relevant documents described in the request.

Copies of the documents shall be served with the request unless copies have already been furnished.

c) Admission in the Absence of Denial - Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within twenty-eight (28) days after service thereof, the Party to whom the request is directed serves upon the Party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a Party deny only a part, or requires qualification of a matter of which an admission is requested, the Party shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the Administrative Law Judge upon prompt notice and motion of the Party making the request.

d) Public Records - If any public records are to be used as evidence, the Party intending to use them may prepare a copy of them insofar as they are to be used, and may seasonably present the copy to the adverse Party by notice in writing, and the copy shall thereupon be admissible in evidence as admitted facts in the case if otherwise admissible, except insofar as its inaccuracy is pointed out under oath by the adverse Party in an affidavit filed and served within 14 days after service of the notice.

e) Effect of Admission - Any admission made by a Party pursuant to request under this rule is for the purpose of the pending action only. It does not constitute an admission to be used against the Party in any other proceeding.

(Source: Added at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.750 Hearing Procedures

a) Adverse Witness -- At the hearing, a witness may be called and examined as if under cross-examination in the same manner and circumstances as provided in Section 2-1102 of the Code of Civil Procedure [735 ILCS 5/2-1102].

b) Testimony and Evidence

1) All testimony taken at the hearing shall be under oath or affirmation.

2) All testimony and other evidence shall be subject to the same rules of evidence as are applicable in courts of record in the State of Illinois.

3) Compelling Appearances of Parties at Hearing -- The appearances at the hearing of a Party or a person who at the time of the hearing is an officer, director, or employee of a Party may be required by serving the Party with a notice designating the person who is to appear. The notice also may require the production at the hearing of documents or tangible things. If the Party or Person is a non-resident of the county, the Administrative Law Judge may order any terms and conditions in connection with its appearance at the hearing that are just, including payment of its reasonable expenses. Upon a failure to comply with the notice, the Administrative Law Judge may enter any Order that is just.

4) No Commission or Department employee shall testify on behalf of a Party at a hearing with respect to the contents of any files, documents, reports, memoranda or records of the Commission or Department or of the results of any investigation conducted by the Department except upon Order of the Administrative Law Judge. Any Party may apply for such an Order in the form of a motion and such motion shall identify the Commission or Department employee whose testimony is desired, the nature of such person's testimony, and the specific purpose to be served thereby. The motion will be granted only upon a showing that the information to be elicited from such testimony is admissible and cannot be obtained through other means. A motion to compel a Department employee to testify shall be served by the movant on the Department to the attention of its Chief Legal Counsel.

5) No testimony or other evidence concerning attempts to settle or adjust an alleged civil rights violation shall be given or received in any hearing without the written consent of all Parties.

6) Written stipulations, signed by the Parties to be bound thereby, may be introduced in evidence. Oral stipulations may be made on the record.

c) Record of Proceedings -- The Commission shall arrange for a record of the proceedings to be made, transcribed and filed in the Chicago or Springfield office of the Commission. Any such record will be made available for examination by the public in either the Chicago or Springfield office upon reasonable notice.

d) Briefs and Oral Argument -- At the conclusion of the evidence, the Administrative Law Judge shall permit the Parties to argue orally and/or submit such briefs or proposed findings of fact and conclusions of law within such time as the Administrative Law Judge may determine. The Department may request leave to file an amicus brief upon an issue presented by the record in a hearing wherein it is not a Party, upon motion to the Administrative Law Judge, which motion shall be served on all Parties. Such motion shall be granted, and a briefing schedule ordered, if, in the opinion of the Administrative Law Judge, the interests of justice would be served thereby. Each Party filing a brief shall file it with the Administrative Law Judge and at the same time serve copies upon all other Parties.

e) Sanctions for Unreasonable Conduct -- Should a Party fail to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuse to comply with any Order entered under this Part, or otherwise engage in conduct which unreasonably delays or protracts proceedings, the Administrative Law Judge may file a recommendation of dismissal with prejudice or default or other appropriate Order imposing sanctions as justice may require, including requiring the offending Party or attorney to pay the reasonable expenses and attorney's fees incurred by any other Party as a result of the misconduct. In a case proceeding under the alternative hearing procedure, the Administrative Law Judge may issue a Final Order containing any sanction for unreasonable

conduct which the Commission may impose under this Section.

(Source: Amended at 22 Ill. Reg. 1336, effective January 1, 1998)

Section 5300.760 Preparation of Recommended Order and Decision

Except for Complaints proceeding under the alternative hearing procedure, following the taking of testimony and the submission of oral argument and briefs, the Administrative Law Judge shall prepare and file with the Commission a written Recommended Order and Decision, which shall include:

a) A summary of the respective contentions of the Parties;

b) Findings of fact based upon, and limited to, the testimony and other evidence of record and upon matters of which official notice may be taken pursuant to Section 10-40(c) of the Illinois Administrative Procedure Act [5 ILCS 100/10-40(c)];

c) A determination as to whether or not a preponderance of the evidence sustains the Complaint, or each portion thereof;

d) An analysis of the case and reasoning to support the Administrative Law Judge's determination;

e) The Administrative Law Judge's Recommended Liability Determination.

1) If it is determined that the preponderance of the evidence supports the Complaint or portions thereof, the Recommended Order shall sustain the Complaint to that extent and require the Respondent to take such actions as are provided under Section 8A-104 or Section 8B-104 of the Act. If the Complainant is entitled to an award of attorney's fees and costs pursuant to Section 8B-104(D) of the Act, the Administrative Law Judge's recommended decision shall be styled a Recommended Liability Determination and shall direct the Complainant to file a petition for an award of attorney's fees pursuant to the procedure established in Section 5300.765 of

this Part. Such Recommended Liability Determination shall promptly be served upon all Parties.

2) If it is determined that the Complaint shall be dismissed and that the Complaint was frivolous, unreasonable or groundless or that the Complainant continued to litigate after it became clearly so and that the Respondent is therefore entitled to an award of attorney's fees pursuant to Section 8A-102(I)(5) of the Act, the Administrative Law Judge's recommended decision shall be styled a Recommended Liability Determination and shall direct the Respondent to file a petition for an award of attorney's fees pursuant to the procedures established in Section 5300.765 of this Part. Such Recommended Liability Determination shall promptly be served upon all Parties;

f) The Administrative Law Judge's Recommended Order and Decision

1) If it is determined that the preponderance of the evidence does not support the Complaint, the Administrative Law Judge's recommended decision shall dismiss the Complaint and shall constitute the Recommended Order and Decision for review by the Human Rights Commission pursuant to Subpart I of this Part.

2) Following submission of materials in connection with any petition for attorney's fees filed as directed in subsection (e)(1) or (e)(2) of this Section pursuant to Section 5300.765 of this Part, the Administrative Law Judge shall prepare a recommended decision which shall incorporate the Recommended Liability Determination by reference and shall include recommendations as to the amount of reasonable attorney's fees and/or costs and a discussion of the issues relevant thereto. This recommended decision shall constitute the Recommended Order and Decision for review by the Human Rights Commission pursuant to Subpart I of this Part.

3) A Recommended Order and Decision that includes a monetary award shall specify the amount recommended to be paid pursuant thereto as of the date of the conclusion of the public hearing and the formula for calculation of supplemental monetary awards, if any.

The Commission shall promptly serve a copy of such Recommended Order and Decision upon all Parties and the Department. Service of the Recommended Order and Decision begins the running of time for filing exceptions pursuant to Section 5300.920 of this Part. Following the issuance of the Recommended Order and Decision pursuant to subsection (f)(1) or (f)(2) of this Section, all pleadings, motions, or other requests shall be directed to the General Counsel of the Human Rights Commission.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.762 Preparation and Issuance of Final Order in Alternative Hearing Procedure Proceedings

a) For all cases which proceed to public hearing under the alternative hearing procedure of Section 8A-102.5 of the Act, following the taking of testimony and the submission of oral argument and briefs, if any are ordered, the selected Administrative Law Judge shall prepare a written Final Order disposing of the Complaint based upon the pleadings and evidence presented. The Final Order shall include:

1) a determination as to whether a preponderance of the evidence sustains the Complaint or each portion thereof;

2) a brief discussion of the analysis of the case and reasoning to support the Administrative Law Judge's determination with sufficient detail to apprise the Parties as to the basis for the decision; and

3) a determination of the damages and relief, including attorneys fees and costs, to which any Party is entitled.

b) The Final Order need not contain detailed findings of fact and conclusions of law.

c) The Final Order may provide for any relief or penalty identified in Section 8A-104 of the Act.

d) The Final Order shall be issued by the selected Administrative Law Judge and shall be served by the Commission on all Parties and the Department

personally or by registered or certified mail.

e) The Final Order entered by an Administrative Law Judge in a case proceeding under the alternative hearing procedure shall be deemed the final decision of the Commission and shall not be subject to review by any three member panel of the Commission nor by the full Commission. Such Final Orders are enforceable in the same manner as Orders And Decisions issued by the Commission.

f) A Party may not apply for and obtain review of a Final Order by filing a petition for review in the Appellate Court pursuant to Section 8-111(A) of the Act except on the basis of fraud or duress. By stipulating to disposition of the Complaint under the alternative hearing procedure, the Parties waive all right of appeal except for Orders procured by fraud or duress.

g) The Final Order entered by an Administrative Law Judge in a case proceeding under the alternative hearing procedure shall not be considered Commission precedent.

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.765 Petitions for Fees and/or Costs

a) Within 21 days after the service of a Recommended Liability Determination pursuant to Section 5300.760(e)(1) or (e)(2) of this

Part or pursuant to an Order entered after a hearing by the selected Administrative Law Judge in a case proceeding under the alternative hearing procedure, the Party or Parties designated

therein may file with the Administrative Law Judge a petition for fees and/or costs, supported by argument and affidavits. Such supporting documentation shall include the following:

1) The number of hours for which compensation is sought, itemized according to the work that was performed, the date

upon which the work was performed and the individual who performed such work;

2) The hourly rate customarily charged by each individual for whom compensation is sought and appropriate documentary support for such claimed rate. In the case of a public law office which does not charge fees, or which charges fees at less than market rate, counsel may provide documentation of the rate prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise;

3) Other factors that affect the computation of fees or costs, as determined by the courts of Illinois and the decisions of the Commission; and

4) Documentation of costs for which the Party seeks reimbursement.

b) Copies of such petitions and supporting documents shall be served by the petitioning Party on all other Parties at the time of filing with the Administrative Law Judge, and proof of service shall be provided. Neither fees nor costs will be awarded in the absence of proper petition therefor.

c) Within 21 days after the service of the petition for an award of attorney's fees and/or costs, all other Parties may file written objections to the petition. Copies of such objections shall be served on all other Parties at the time of filing with the Administrative Law Judge, and proof of service shall be provided. Failure to file such objections shall be deemed a waiver of any objections to the award of fees. No reply in support of the petition or in response to objections may be filed except upon leave granted by the Administrative Law Judge upon motion and good cause shown.

d) A Party may request additional time to file a pleading governed by this Section by written motion filed with the Administrative Law Judge stating the reasons therefor. Copies thereof shall be served at the same time on all other Parties. Such requests for extension of time shall be granted where good cause is shown.

e) The Administrative Law Judge may convene a hearing to resolve

contested issues and may take other steps to produce a complete record with regard to a claim for fees and/or costs.

f) Following the submission of the petition for fees and/or costs and objections thereto and the completion of a hearing, if any, the Administrative Law Judge shall prepare a Recommended Order and Decision pursuant to Section 5300.760(f)(2) of this Part or, in a case proceeding under the alternative hearing procedure, shall prepare a Final Order pursuant to Section 5300.762 of this Part.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.770 Settlement (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.780 Voluntary Dismissal

The complainant may obtain dismissal of the complaint, with prejudice, by filing a written motion with the Administrative Law Judge and serving all parties and the Department. If knowingly and voluntarily made, such motion shall be granted and the proceedings dismissed by the Administrative Law Judge by written order served on all parties and the Department.

(Source: Amended at 5 Ill. Reg. 2709, effective March 2, 1981)

Section 5300.782 Authority for Sections 5300.783-5300.787 (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.783 Fees and Costs (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.784 Motion for Fees or Costs (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.785 Responses to Motions for Fees or Costs (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.786 Extensions of Time (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.787 Supplemented Record (Repealed)

(Source: Repealed at 16 Ill. Reg. 7838, effective June 1, 1992)

SUBPART H: PRACTICE IN FRONT OF THE COMMISSION

Section 5300.805 Scope of Motion Practice

a) A motion may be filed with the Commission to obtain any relief which the Commission may grant under the provisions of the Act.

b) Unless another procedure is specifically provided for in this Part, the procedure provided for in this Subpart shall be followed with respect to all motions or other requests for relief directed to all motions or other requests for relief directed to the Full Commission or a 3-member panel thereof.

(Source: Added at 9 Ill. Reg. 6207, effective April 24, 1985)

SUBPART H: REVIEW OF RECOMMENDED ORDER AND DECISION

Section 5300.810 Recommended Order Not Final (Renumbered)

(Source: Renumbered to Section 5300.910 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.815 Form of Motions and Objections

All motions directed to the Commission must be submitted in writing. The motion shall state the nature of the order or relief requested, and shall be accompanied by a memorandum of law which states the points and authorities relied upon by the movant. Any objections to motions shall be filed with the Commission within 10 days after service of the said motion. The objections shall be accompanied by a memorandum of law containing the points and authorities relied upon in opposition to the motion.

(Source: Added at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.820 Exceptions to Recommended Order (Renumbered)

(Source: Renumbered to Section 5300.920 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.825 Presentation of Motions

Unless otherwise provided in this Part, motions shall be presented by the Commission's staff to the Commission at the first available meeting of the full Commission or the Commission panel which follows the expiration of the ten (10) day response period provided for in Section 5300.815. Motions will be considered by the Commission based upon the memoranda submitted by the Parties. Unless it is requested by the Commission, no oral argument will be allowed on motions. If the Commission requests oral argument, it will send the Parties written notice.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.830 Responses to Exceptions (Renumbered)

(Source: Renumbered to Section 5300.930 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.835 Emergency Motions

a) If action is required on a motion prior to the time of the next scheduled Commission meeting at which the requested relief could be statutorily granted, the motion shall be clearly identified as an emergency motion. All emergency motions shall contain a memorandum stating why the motion must be decided prior to the time of the appropriate Commission meeting. All emergency motions shall be presented by Commission staff to the Chairperson of the Commission.

b) The Chairperson of the Commission shall have the authority to consider and grant motions filed under Subsection (a) of this Section if, and only if, the sole relief requested in the motion is the extension of a filing deadline imposed by the Act or this Part. The Chairperson shall grant such motions only on just terms, and for good cause shown.

c) The Chairperson of the Commission shall have the authority to direct the convening of an emergency Full Commission or Panel meeting to consider an emergency motion. The emergency meeting shall be convened when a party will suffer irreparable damage if the motion is not considered until the next appropriate, regularly scheduled meeting. The following examples illustrate situations in which an emergency meeting will be convened. This is not an exhaustive listing of all situations in which an emergency meeting will be considered appropriate:

1) An emergency meeting will be convened if a delay in petitioning the circuit court for enforcement of a subpoena will make it difficult or impossible for the court to enforce the subpoena.

2) An emergency meeting will be convened if a Commission Order is being violated, and a delay in an action for enforcement will make it difficult or impossible to put the parties into the position they would have been in had there been no violation of the order.

3) An emergency meeting will be convened upon the motion of the Department if a delay in the approval of the terms and conditions of a settlement makes it difficult or impossible for either party to comply with the terms of the settlement.

d) Every emergency motion shall contain a proposed order granting the relief requested by the movant.

(Source: Added at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.840 Extensions of Time (Renumbered)

(Source: Renumbered to Section 5300.940 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.845 Agreed Motions and Orders

If a motion has been agreed to by all parties, it shall clearly state that it is an agreed motion on its face. Agreed motions shall be considered in accordance with the procedure provided for in Section 5300.825 of this Subpart unless they are also emergency motions. An agreed motion shall contain a proposed agreed order.

(Source: Added at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.850 Oral Argument (Renumbered)

(Source: Renumbered to Section 5300.950 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.855 Extension of Time

All motions for extension of time directed to the Commission shall contain the following information:

- a) The number of previous motions for extension of time filed by the movant, and
- b) The disposition by the Commission of previous motions for extension of time.

(Source: Added at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.860 Form of Pleadings and Other Papers (Renumbered)

(Source: Renumbered to Section 5300.960 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.865 Style of Documents for Commission Consideration

Except for Requests for Review, documents presented for filing before the Commission will not be accepted unless they are accompanied by the number of copies specified in Subsection 5300.40(e) of this Part. Every pleading filed for the consideration of a Commission panel or the full Commission shall state on its face either "For the consideration of a Commission panel" or "For the consideration of the full Commission." Any document which does not comply with this Section will not be accepted for filing by the Commission.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.870 Ex Parte Communications (Renumbered)

(Source: Renumbered to Section 5300.970 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.880 Brief by Department (Renumbered)

(Source: Renumbered to Section 5300.980 at 9 Ill. Reg. 6207, effective April 24, 1985)

SUBPART I: REVIEW OF RECOMMENDED ORDER AND DECISION

Section 5300.910 Finality of Recommended Order

If no timely exceptions to the Recommended Order and Decision are filed in accordance with Section 5300.920 of this Part, the Recommended Order and Decision shall become the order of the Commission without further review. The Commission will serve on the Parties a notification that a Recommended Order and Decision has become the order of the Commission pursuant to this Section. The failure to file exceptions to a Recommended Order and Decision shall constitute a waiver of any arguments which could have been made to a Commission panel. A Party who fails to file exceptions shall be deemed to have failed to exhaust administrative remedies. If

exceptions are filed, the Recommended Order and Decision will not be considered final unless and until it is made final by a Commission panel pursuant to this Part.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.920 Exceptions to Recommended Order

Within thirty (30) days after service of the Administrative Law Judge's Recommended Order and Decision upon any Party, such Party may file with the Commission written exceptions, supported by argument, to the findings and recommended order of the Administrative Law Judge. Copies of such written exceptions and argument shall be served by such Party on all other Parties at the time of filing with the Commission, and proof of service provided. Except by permission of the Commission, the exceptions and argument shall not exceed thirty (30) pages.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.930 Responses to Exceptions

If written exceptions to the Recommended Order and Decision are timely filed as hereinabove provided by any Party to the proceedings, all other Parties shall have the opportunity to file written responses and counter-arguments thereto. Such responses and counter-arguments shall be filed with the Commission within twenty-one (21) days after the service of the exceptions, and copies thereof served at the same time on all other Parties. Except by permission of the Commission, the responses and counter-arguments shall not exceed thirty (30) pages.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.940 Extensions of Time

A Party may request additional time to file a pleading governed by Section 5300.920 or 5300.930 of this Part by written motion filed with the Commission stating the reasons therefor. Copies thereof shall be

served at the same time on all other Parties. A request for additional time not exceeding fifteen (15) days in the case of a pleading governed by Section 5300.920 or ten (10) days in the case of a pleading governed by Section 5300.930 shall be granted by the Commission through the issuance by the Executive Director of a written order to all Parties; but such an extension shall be designated as final and no further extensions with regard to that pleading will be allowed. A request for additional time exceeding the aforementioned limitations will be granted by a three-member panel of the Commission only under exceptional circumstances.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.945 Acceptance of the Recommended Order for Review

a) Following the filing of written exceptions and responses, a 3-member panel of the Commission shall decide whether to accept the case for review. If the panel declines to review the Recommended Order and Decision, it shall issue a notice to the Parties and enter the notice on the record. Upon the entry of the notice, the Recommended Order and Decision of the Administrative Law Judge shall become the Order of the Commission. In that case, all recommendations shall be considered accepted. If the Administrative Law Judge recommended a final disposition of the Complaint and charge, the Recommended Order and Decision shall be considered final and appealable.

b) Where a time limit is calculated based on the date of service of a Commission order, that time limit shall be calculated based on the date of service of the notice that the Commission has declined review. After the entry of the notice described in this Section, references in the Act or this Part to the Order and Decision of the Commission shall be deemed to be references to the Recommended Order and Decision of the Administrative Law Judge.

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.950 Oral Argument

Any Party to the proceedings shall be permitted to request oral arguments in support or opposition to the Recommended Order and Decision, by including a written demand therefor at the time of filing exceptions or responses as hereinabove provided. If oral arguments are so requested and if the Commission panel decides to review the Recommended Order and Decision, it shall set a date for such arguments to be heard and shall serve notice in writing of the time and place so fixed to all Parties at least 20 days prior thereto. Any other Party not previously requesting oral argument shall be allowed to present such arguments at the same time and place and should file a written notice of intention to participate with the Commission, with service thereof on all other Parties, not less than 10 days prior to the date set. If no Party requests oral argument, and if the Commission panel decides to review the Recommended Order and Decision, it shall decide the case based upon the written record unless at least two members of the panel find that oral argument is necessary to resolve an issue presented by the Recommended Order and Decision, the exceptions or the response. In all such cases the Commission shall serve notice of oral argument in writing. The Commission shall arrange for a record of oral arguments to be made, transcribed and filed in its Chicago office as part of the official record in the case.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.960 Form of Pleadings and Other Papers

All exceptions, responses and other papers filed with the Commission shall conform with the provisions of Section 5300.40 of this Part.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.970 Ex Parte Communications

A party or his representative shall not communicate, directly or indirectly with any member of the Commission in connection with any issue in a

pending case except as provided in this Part and upon notice and opportunity for all parties to participate.

(Source: Section 5300.970 renumbered from Section 5300.870 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.980 Brief by Department

The Department in a matter where it is not a party, may be granted leave by a three-member panel of Commissioners to submit an amicus brief upon a question of law presented by the recommended order and decision. Such leave will be granted upon motion to the Commission and a copy of the motion shall be served on all parties. Such a motion should be made prior to the time any party's exceptions to the recommended order and decision are due, and if granted the Commission shall modify the schedule for submission of exceptions and responses to afford the parties adequate time to respond to the Department's brief. Such a motion by the Department will be granted by the Commission if it is satisfied that the interests of justice would be served thereby.

(Source: Section 5300.980 renumbered from Section 5300.880 at 9 Ill. Reg. 6207, effective April 24, 1985)

SUBPART J: REMANDMENT

Section 5300.1010 Request To Present Additional Evidence

Any party to the proceedings may request an opportunity to submit additional evidence for the record, subsequent to issuance of the Administrative Law Judge's recommended order and decision, by including a written request therefor at the time of filing exceptions or responses as hereinabove provided. Such request shall be supported by a statement specifying in detail the evidence which petitioner proposes to present, its relevance, and the reasons why such evidence was not presented at the hearing. A request to present additional evidence shall be granted by the Commission or a three-member panel only if it determines that substantial justice so requires. In general, such a

request will be viewed with disfavor by the Commission.

(Source: Section 5300.1010 renumbered from Section 5300.910 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.1020 Motion for Rehearing Before an Administrative Law Judge

Any party may request a rehearing of all or any portion of a case, before the same or a different Administrative Law Judge, by including a written request therefor at the time of filing exceptions or responses as hereinabove provided. Such request shall be supported by a statement of the reasons why such party believes that a rehearing is necessary. A motion for rehearing will be granted by the Commission or a three-member panel only if it determines that substantial justice so requires.

(Source: Section 5300.1020 renumbered from Section 5300.920 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.1030 Remandment on the Commission's Own Motion

The Commission or a three-member panel on its own motion may remand a case for a rehearing in whole or in part, or for the taking of additional evidence, whenever in its opinion such action is necessary to do justice in the case or to facilitate a fair and complete adjudication of the issues.

(Source: Section 5300.1030 renumbered from Section 5300.930 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.1040 Remand Proceedings

Whenever the Commission or a three-member panel shall determine to remand any case, the Commission shall issue and serve upon all parties a written order to such effect. The order shall provide that the cause is remanded to an Administrative Law Judge, and shall specify the nature and scope of the proceedings to be had. The person conducting such proceedings shall set a date for hearing, if necessary, of not less than thirty nor more than ninety days after service of

the remand order, with due notice to all parties. The remand proceeding shall be conducted in accordance with the provisions of Subparts E and G of this Part. After conclusion of the proceedings, the Administrative Law Judge shall file with the Commission written findings and recommendations based thereon, and shall serve copies at the same time on all parties. Such findings and recommendations shall be subject to review by the Commission or a three-member panel as provided in Subpart I of this Part.

(Source: Section 5300.1040 renumbered from Section 5300.940 and amended at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.1050 Rehearing Before Full Commission (Renumbered)

(Source: Renumbered to Section 5300.1150 at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.1060 Modification of Commission Order (Renumbered)

(Source: Renumbered to Section 5300.1160 at 9 Ill. Reg. 6207, effective April 24, 1985)

SUBPART K: ORDER AND DECISION OF THE COMMISSION

Section 5300.1110 Commissioners Participating

The Commission, through a panel of three members designated by the Chairperson, shall decide whether to review the Recommended Order and Decision of the Administrative Law Judge. If the panel decides to review the Recommended Order and Decision, it shall review the record and render a decision on behalf of the Commission with respect to all matters covered by the Recommended Order and Decision.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.1120 Standard of Review

If a panel of the Commission accepts a Recommended Order and Decision for review, it

shall accept the findings of fact of the Administrative Law Judge as true and correct, unless it shall find that such findings or any of them are contrary to the manifest weight of the evidence.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.1130 Proposal for Decision

Whenever the Commission determines to reverse or substantially modify a recommended order and decision on grounds not addressed by exceptions, the Commission shall issue and serve upon all parties a Proposal for Decision in the same form and manner as provided in Section 5300.1140 of this Part. Said Proposal shall be accompanied by a notice affording all parties not less than thirty (30) days from the date of service thereof to file written exceptions to the entry of the decision. Such written exceptions, if any, shall be in the same form and treated in the same manner as if filed under Section 5300.920. If no such written exceptions are filed by any party, the Commission shall enter the Proposal for Decision as its Order and Decision in the case, and shall so notify the parties.

(Source: Section 5300.1130 renumbered from Section 5300.1030 and amended at 9 Ill. Reg. 6207, effective April 24, 1985)

Section 5300.1140 Order and Decision

After a decision has been made to accept a Recommended Order and Decision for review, and after all proceedings provided for in Subparts I, J and K of this Part, except in cases which proceeded under the alternative hearing procedure, the panel of three Commission members shall issue its Order and Decision and shall serve a copy thereof on all parties and the Department personally or by registered or certified mail. Subject to the provisions of this Article, the Order and Decision of the Commission may affirm, reverse or modify in whole or any part the Recommended Order and Decision.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.1145 Interest

Whenever an Order and Decision, or a Final Order in a case proceeding under the alternative hearing procedure, includes an award of interest pursuant to Section 8A-104(J) of the Act, the amount of interest shall be calculated according to the method set forth in this Section. This method shall also be used when a Recommended Order and Decision includes an award of interest and a panel of the Commission declines review.

a) Liability for interest begins on the first day of the calendar month following the civil rights violation. Interest shall accrue on a monthly basis thereafter. For example, if the violation occurred on June 15, liability for interest would begin on July 1, and the first month's interest would accrue on August 1.

b) The monthly rate of interest shall be 1/12 of the annual rate of interest for judgments specified in Section 2-1303 of the Code of Civil Procedure [735 ILCS 5/2-1303] for the calendar year in which interest accrues.

c) The monthly rate of interest shall be multiplied by the amount of damages which accrued as of the end of the last day of the month preceding the accrual of interest. For example, to calculate the amount of interest which accrues on August 1, one must multiply the monthly rate of interest by the amount of damages which accrued as of midnight on July 31.

d) Interest shall compound annually. For example, if the first month's interest accrued on August 1, 1988, the amount of monthly interest for August 1, 1989 would be calculated by adding the damages and interest which accrued as of July 31, 1989. This sum would then be multiplied by the applicable monthly rate.

e) Interest shall continue to accrue until the payment specified by the Order and Decision has been made.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.1150 Rehearing Before Full Commission

a) Within 30 days after service of the Commission's Order and Decision, or a notice that review has been declined, issued in accordance with this Article, a Party may petition for rehearing before the entire Commission.

b) Such petition shall be in writing and filed at the Commission's Chicago office, with service thereof at the same time on all other Parties. The petition shall clearly specify the reasons why rehearing should be granted. The Commission, at its discretion, may order that a response to the petition be filed.

c) The petition, and response if any, shall be reviewed by the entire Commission and shall be granted only by a vote of six Commissioners when it is clear that the petition raises legal issues of significant impact or that panels of the Commission have reached conflicting decisions.

d) The Commission shall issue an Order on every petition, and shall serve a copy thereof on all Parties personally or by registered or certified mail. Whenever a petition for rehearing is granted, the Order shall notify the Parties of the time and place of oral argument before the Commission and whether any additional written arguments will be considered. Upon the granting of the petition for rehearing, the Commission's Order and Decision will be vacated.

e) When rehearing has been granted by the Commission in a matter where the Department is not a Party, the Department may request leave to file an amicus brief upon a question of law presented by the petition for rehearing upon motion to the Commission, a copy of which shall be served on all Parties. Such a motion by the Department will be granted by the Commission if it is satisfied that the interests of justice would be served thereby.

f) Whenever rehearing is granted by the Commission in accordance with this Section, the Commission shall issue an Order and Decision en banc in the same manner as provided in Section 5300.1140.

(Source: Amended at 20 Ill. Reg. 7820, effective June 1, 1996)

Section 5300.1160 Modification of Commission Order

At any time prior to a final order of the Court in a proceeding under Section 8-111 of the Act, the Commission or the panel which decided the matter, upon its own motion or the motion of any Party, and with due notice to all Parties, may modify or set aside in whole or in part any finding or order made by it in the course of reviewing a Recommended Order and Decision. In such event, the Commission shall issue and serve upon the Parties a Supplemental Order and Decision in the same manner as provided in Section 5300.1140.

(Source: Amended at 16 Ill. Reg. 7838, effective June 1, 1992)

Section 5300.1170 Interlocutory Appeals

a) If a Party desires to appeal to the appellate court an Order of a 3-member panel or the full Commission which is not final, a motion for appropriate findings must be made in writing within 14 days after the date of entry of the Order in question. The procedure for consideration of such motions shall be as described in Sections 5300.805 - 5300.865 of this Part.

b) The filing of a motion under this Section does not act as an automatic stay of the Order in question. If a Party wants the effect of the Order to be stayed while the motion for findings is being considered, this relief must be requested in the motion. If the motion for findings is granted, the Commission will automatically stay proceedings pending a ruling by the appellate court.

c) The 3-member panel or the full Commission will grant the motion for findings if it finds that the Order in question involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation.

d) If the Commission makes the required findings, the moving Party must file an application for leave to appeal within 14 days after their entry, in accordance with Supreme Court Rule 308.

(Source: Added at 20 Ill. Reg. 7820, effective June 1, 1996)